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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA, *et al.*, :
ex rel. CHERYLE KERR, :

Plaintiffs, :

v. :

APS HEALTHCARE, INC., INNOVATIVE :
RESOURCE GROUP, LLC D/B/A APS :
HEALTHCARE MIDWEST and APS :
HEALTHCARE BETHESDA, INC. :

Defendants. :

No. 2:11-CV-01454-JCM-GWF

**FILED *IN CAMERA* AND UNDER
SEAL PURSUANT TO
31 U.S.C. § 3730**

-----X
**UNITED STATES' AND STATE OF NEVADA'S
NOTICE OF ELECTION TO DECLINE INTERVENTION**

1 Pursuant to the False Claims Act (FCA), 31 U.S.C. § 3730(b)(4)(B), the United States
2 notifies the Court of its decision not to intervene in this action. Pursuant to the Nevada False
3 Claims Act (NFCA), NRS 357.110(2), the State of Nevada also notifies the Court of its decision
4 not to intervene in this action.

5 Although the United States and the State of Nevada decline to intervene, they
6 respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the
7 action in the name of the United States; providing, however, that the "action may be dismissed
8 only if the court and the Attorney General give written consent to the dismissal and their reasons
9 for consenting." *Id.* They also refer the Court to NRS 357.130, which allows the relator to
10 maintain the action in the name of the State of Nevada, and NRS 357.080(1), which provides
11 that the action "may be dismissed only with leave of the court, taking into account the public
12 purposes of this chapter and the best interests of the parties."

13 The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding
14 this language from the FCA quoted above, the United States has the right only to a hearing when
15 it objects to a settlement or dismissal of the action. U.S. ex rel. Green v. Northrop Corp., 59
16 F.3d 953, 959 (9th Cir. 1995); U.S. ex rel. Killingsworth v. Northrop Corp., 25 F.3d 715, 723-25
17 (9th Cir. 1994). Therefore, the United States and the State of Nevada request that, should either
18 the relator or the defendant propose that this action be dismissed, settled, or otherwise
19 discontinued, this Court provide the United States and the State of Nevada with notice and an
20 opportunity to be heard before ruling or granting its approval.

21 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all
22 pleadings filed in this action be served upon the United States; the United States also requests
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that orders issued by the Court be sent to the Government's counsel. The United States reserves
1 its right to order any deposition transcripts, to intervene in this action, for good cause, at a later
2 date, and to seek the dismissal of the relator's action or claim under 31 U.S.C. § 3730(e)(4).

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4 The United States also requests that it be served with all notices of appeal.

5 The State of Nevada further requests, pursuant to NRS 357.130(1), that all pleadings filed
6 in this action be served upon the State of Nevada and that orders issued by the Court be sent to
7 the State of Nevada's counsel. The State of Nevada reserves its right to order any deposition
8 transcripts, to intervene in this action, for good cause, at a later date, and to seek the dismissal of
9 the relator's action or claim under NRS 357.080. The State of Nevada also requests that it be
10 served with all notices of appeal.

11
12 Finally, the United States and the State of Nevada request that the relator's Complaint,
13 this Notice, and the attached proposed Order be unsealed. The United States and the State of
14 Nevada request that all other papers on file in this action remain under seal because in discussing
15 the content and extent of the investigation by the United States and the State of Nevada, such
16 papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal
17 and time for making an election to intervene should be extended.

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A proposed order accompanies this notice.

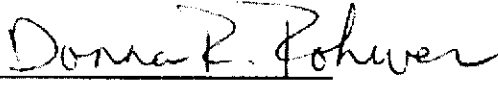
Dated: May 16, 2012

Respectfully submitted,

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Nevada Attorney General

By: 
DONNA ROHWER
Deputy Attorney General

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ORDER

The United States and the State of Nevada having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), and the Nevada False Claims Act, NRS 357.110(2), the Court rules as follows:

IT IS ORDERED that,

1. The complaint be unsealed and served upon the defendant by the relator;
2. All other contents of the Court's file in this action remain under seal and not be made public or served upon the defendant, except for this Order and The United States' and State of Nevada's Notice of Election to Decline Intervention, which the relator will serve upon the defendant only after service of the complaint;
3. The seal be lifted as to all other matters occurring in this action after the date of this Order;

1 4. The parties shall serve all pleadings and motions filed in this action, including supporting
2 memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3), and upon the State
3 of Nevada, as provided for in NRS 357.130(1). The United States and the State of Nevada may
4 order any deposition transcripts and are entitled to intervene in this action, for good cause, at any
5 time;


6 5. The parties shall serve all notices of appeal upon the United States and the State of
7 Nevada;

8 6. All orders of this Court shall be sent to the United States and the State of Nevada; and that
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10 7. Should the relator or the defendant propose that this action be dismissed, settled, or
11 otherwise discontinued, the Court will provide the United States and the State of Nevada with notice
12 and an opportunity to be heard before ruling or granting its approval.
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14 IT IS SO ORDERED,

15 Dated: May 17, 2012

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17 GEORGE FOLEY, JR.
18 United States Magistrate Judge
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